

## **DETAILED ACTION**

### ***Response to Amendment***

Applicant's election without traverse of Invention I (claims 1-6) in the reply filed on 10/04/10 is acknowledged.

### ***Claim Interpretation***

1. In determining patentability of an invention over the prior art, all claim limitations have been considered and interpreted as broadly as their terms reasonably allow. See MPEP § 2111.

Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant always has the opportunity to amend the claims during prosecution, and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. *In re Pruter*, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-51 (CCPA 1969). See MPEP § 2111.

2. All claim limitations have been considered. Additionally, all words in the claims have been considered in judging the patentability of the claims against the prior art. The following language is interpreted as not further limiting the scope of the claimed invention. See MPEP 2106 II C.

Language in a method claim that states only the intended use or intended result, but the expression does not result in a manipulative difference in the steps of the claim. Language in a system claim that states only the intended use or intended result, but does not result in a structural difference between the claimed invention and the prior art.

In other words, if the prior art structure is capable of performing the intended use, then it meets the claim.

Claim limitations that contain statement(s) such as “*if, may, might, can could*”, as optional language. As matter of linguistic precision, optional claim elements do not narrow claim limitations, since they can always be omitted.

Claim limitations that contain statement(s) such as “*wherein, whereby*”, that fail to further define the steps or acts to be performed in method claims or the discrete physical structure required of system claims.

USPTO personnel should begin claim analysis by identifying and evaluating each claim limitation. For processes, the claim limitations will define steps or acts to be performed. For products, the claim limitations will define discrete physical structures or materials. Product claims are claims that are directed to either machines, manufactures or compositions of matter. See MPEP § 2106 II C.

The subject matter of a properly construed claim is defined by the terms that limit its scope. It is this subject matter that must be examined. As a general matter, the grammar and intended meaning of terms used in a claim will dictate whether the language limits the claim scope. Language that suggests or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation. The following are examples of language that may raise a question as to the limiting effect of the language in a claim:

- (A) statements of intended use or field of use,
- (B) “adapted to” or “adapted for” clauses,
- (C) “wherein” clauses, or
- (D) “whereby” clauses.

See MPEP § 2106 II C.

3. Independent claims are examined together, since they are not patentable distinct. If applicant expressly states on the record that two or more independent and distinct

inventions are claimed in a single application, the Examiner may require the applicant to elect an invention to which the claims will be restricted.

### ***Abstract***

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure is objected to because it is too long. Correction is required. See MPEP § 608.01(b).

### ***Information Disclosure Statement***

The information disclosure statement filed 7/10/01 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. It has been placed in the application file, but the information referred to therein has not been considered.

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

**Claims 1 - 6** are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Re Claim 1: Improper apparatus claim/Software Per Se

Although the preamble of the claim recites that it is directed to a "system" (i.e., apparatus). The subject matter (e.g., nodes) recited in the body of the claim is interpreted as software per se.

As noted supra, apparatus claims should be defined in terms of their structural components.

NOTE: Applicant should review specification for support and indicate where support may be found (i.e., Whether the nodes are hardware and/or software). If the nodes are hardware, applicant should claim in terms of components of system rather than the steps or acts performed (e.g., "submitting node configured to transmit ....", "sponsor node configured to disclose ...." etc. ) Alternatively, in the body of the system claim, applicant should identify the required structural components (e.g., memory, processor, buyer/seller device etc.) and what they do (e.g. "configured to"). NOTE: Please review dependent claims 2 – 6 and make similar changes.

Dependent claims are further rejected based on the same rationale as the claims from which they depend.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**Claims 1-6** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, essential steps and/or essential structural cooperative relationships of elements such omission amounting to a gap between the elements, the steps and/or the necessary structural connections. See MPEP § 2172.01. The omitted elements, steps and/or structural cooperative relationships are:

Re Claim 1: Should "a submitting node configured to transmit information describing a product, information indicating whether or not the product is to be resubmitted for auction if a transaction fails to be established and information including sale conditions to a sponsor node for any product and ~~submitting~~ submit the product in the auction;"

be

-- a submitting node configured to

transmit information describing a product and information including sale conditions for the product to a sponsor node, wherein the information indicates whether or not the product is to be resubmitted for auction when a transaction fails to be established and the information includes sales conditions for the product,

and submit the product in the auction; -- or something similar?

It would seem all the information would pertain to the specific product and not any product.

Re Claim 1: Should "a sponsor node configured to disclose said submitted product as a product for auction by a format enabling viewing from individual nodes, receive a bid from anyone, determine a successful bid from bids having purchase conditions matching with the sale conditions of the product, change part or all of the content of said disclosure and said sale conditions for a product failing in establishment of a transaction, and include this as a product for auction again; and" be

-- a sponsor node configured to

disclose said submitted product as a product for auction by presenting a disclosure of the information describing the product and the information including the sales conditions for the product in a format enabling viewing from one or more bidding nodes,

receive a bid including purchase conditions from said one or more bidding nodes, determine whether there is a successful bid [among the bids received ???] that has purchase conditions matching with the sale conditions of the product, [establish a transaction when there is a successful bid ??? This step appears to be missing from the claim],

change part or all of the disclosure for the product when it fails in establishment of a transaction and when the information indicates the product is to be re-submitted for auction,

and [re-submit the product as a product for auction by presenting the changed disclosure in a format enabling viewing from said one or more bidding nodes ???}; and -- or something similar ?

Only the information is actually sent to the sponsor node and not anything about the submission of the product for auction.

Since the purchase conditions are what are compared to the sales conditions. The claim should clarify how the purchase conditions are received (e.g., as part of the bid ?)

Subsequent language in the claim refers to a "disclosure".

It would seem that a term like "said" or "the" is needed to suggest that the sponsor node is the same one that the information was transmitted to.

It would seem that the individual node(s) are really "bidding node(s)". If so, consistent terminology should be used.

Re Claim 1: Should, "a bidding node for configured to view the product for auction disclosed from said sponsor node via a network and placing a bid with respect to the product desired to be purchased." be

-- a bidding node configured to

view the product for auction disclosed by said sponsor node via a network, and place a bid with respect to the product desired to be purchased. -- or something similar?

Since the purchase conditions are what are compared to the sales conditions. The claim should clarify how the purchase conditions are received (e.g., as part of the bid ?)

It seems that bidding node(s) are what interact with the sponsor node and that should be clarified in the claim.

NOTE: Please review dependent claims 2 – 6 and make similar changes.

Re Claims 2 and 3: Should "information" be -- instruction -- ? The sponsor node acts based on an instruction. If so, consistent terminology should be used.

Re Claims 2 and 3: Should "if" be -- when -- ? Please note claim interpretation supra. Applicant should claim the condition explicitly since "if" suggests it may never occur.

Dependent claims are rejected based on the same rationale as the claims from which they depend.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.



**Claims 1-4 and 6** are rejected under 35 U.S.C. 102(e) as being anticipated by Wagoner, US Pat. No. 7,219,080.

**Re Claim 1:** Wagoner discloses an computer-implemented auction system for carrying out an auction in a network to which a plurality of nodes are connected, comprising:

a submitting node configured to transmit information describing a product, information indicating whether or not the product is to be resubmitted for auction if a transaction fails to be established and information information including sale conditions to a sponsor node for any product (Wagoner, abstract, col. 2, line 18+ - col. 3, line 12; col. 6, lines 30 – 60; col. 8, lines 51+ - col. 9, line 8; col. 11, line 60+ - col. 12, line 16; col. 12, line 57 - col. 13, line 18);

Nonfunctional Descriptive Material

Certain types of descriptive material, such as music, literature, art, photographs, and mere arrangements or compilations of facts or data, without any functional interrelationship is not a process, machine, manufacture, or composition of matter. See MPEP § 2106.01, II.

and submit the product in the auction (Wagoner, abstract, col. 2, line 30+ - col. 3, line 12; col. 11, line 60+ - col. 12, line 16);

a sponsor node configured to said submitted product as a product for auction by a format enabling viewing from individual nodes (Wagoner, abstract, col. 2, line 30+ - col. 3, line 12; col. 11, line 60+ - col. 12, line 16),

receive a bid from any node (Wagoner, col. 3, line 13 - col. 4, line 13; col. 4, line 63+ - col. 5, line 2; col. 7, lines 6 – 15);

determine a successful bid from bids having purchase conditions matching with the sale conditions of the product (Wagoner, col. 3, line 13 - col. 4, line 13; col. 4, line 63+ - col. 5, line 2; col. 7, lines 6 – 15),

change part or all of the content of said disclosure and said sale conditions for a product failing in establishment of a transaction (Wagoner, abstract, col. 2, lines 30+ - col. 3, line 12; col. 6, lines 48 - 60),

and include this as a product for auction again (Wagoner, abstract, col. 2, lines 30+ - col. 3, line 12; col. 6, lines 48 - 60); and

a bidding node configured to view the product for auction disclosed from said sponsor node via a network (Wagoner, col. 3, line 13 - col. 4, line 13; col. 4, line 63+ - col. 5, line 2; col. 7, lines 6 – 15),

and place a bid with respect to the product desired to be purchased (Wagoner, col. 3, line 13 - col. 4, line 13; col. 4, line 63+ - col. 5, line 2; col. 7, lines 6 – 15).

**Re Claim 2:** Wagoner discloses the claimed invention supra and further discloses wherein said submitting node is configured to transmit to the sponsor node information on whether it wishes to submit the product for re-auction if the transaction fails to be established (Wagoner, abstract, col. 2, line 30+ - col. 3, line 12; col. 11, line 60+ - col. 12, line 16),

and said sponsor node is configured to include a product as a product for re-auction only when a product for which a transaction has failed to be established has an

instruction for submission for re-auction (Wagoner, abstract, col. 2, lines 30+ - col. 3, line 12; col. 6, lines 48 - 60).

**Re Claim 3:** Wagoner discloses the claimed invention supra and further discloses

wherein said submitting node is configured to transmit to the sponsor node instruction on whether it wishes to submit the product for re-auction if the transaction fails to be established along with information describing the product and information on the sales conditions at the same time as applying for submission of the product (Wagoner, abstract, col. 2, line 30+ - col. 3, line 12; col. 11, line 60+ - col. 12, line 16), and

said sponsor node is configured to change part or all of the content of the disclosure relating to the product and the sales conditions (Wagoner, abstract, col. 2, lines 30+ - col. 3, line 12; col. 6, lines 48 - 60),

and includes a product as for re-auction only for a product for which a transaction has failed to be established and having an instruction for submission for re-auction (Wagoner, abstract, col. 2, lines 30+ - col. 3, line 12; col. 6, lines 48 - 60).

**Re Claim 4:** Wagoner discloses the claimed invention supra and further discloses

wherein said sales conditions include a minimum reserve (Wagoner, abstract, col. 2, line 30+ - col. 3, line 12; col. 6, lines 30 - 47; col. 11, line 60+ - col. 12, line 56),

said purchase conditions include a bid (Wagoner, col. 3, line 13 - col. 4, line 13; col. 4, line 63+ - col. 5, line 2; col. 7, lines 6 - 15), and

said sponsor node is configured to determine the successful bid from the bids of at least said minimum reserve (Wagoner, col. 2, lines 53+ - col. 3, line 4; col. 3, line 13 - col. 4, line 13; col. 4, line 63+ - col. 5, line 2; col. 6, lines 30 - 47; col. 7, lines 6 - 15; col. 6, line 60+ - col. 12, line 56),

make changes such as processing for reducing the minimum reserve of the product for a product for which a transaction has failed to be established and being submitted for re-auction (Wagoner, abstract, col. 2, lines 30+ - col. 3, line 12; col. 6, lines 30 - 60; col. 11, line 60+ - col. 12, line 56),

and include that product as a product for re-auction (Wagoner, abstract, col. 2, lines 30+ - col. 3, line 12; col. 6, lines 48 - 60).

**Re Claim 6:** Wagoner discloses the claimed invention supra and further discloses

wherein said sale conditions include information designating an auction period (Wagoner, abstract, col. 2, line 30+ - col. 3, line 12; col. 11, line 60+ - col. 12, line 16; col. 13, lines 19 - 42), and

said sponsor node is configured to disclose said product and receive bids in said designated period (Wagoner, col. 2, lines 30+ - col. 4, line 13; col. 4, line 63+ - col. 5, line 2; col. 7, lines 6 - 15; col. 13, lines 19 - 42),

make changes including changing the auction period for a product for which a transaction has failed to be established and be submitted for re-auction (Wagoner, abstract, col. 2, lines 30+ - col. 3, line 12; col. 6, lines 48 - 60; col. 13, lines 19 - 22),

and include that product as a product for re-auction (Wagoner, abstract, col. 2, lines 30+ - col. 3, line 12; col. 6, lines 48 - 60).

**Claims 1-3 and 5** are rejected under 35 U.S.C. 102(e) as being anticipated by Porat, US Pat. No. 7,330,826.

**Re Claim 1:** Porat discloses a computer-implemented auction system for carrying out an auction in a network to which a plurality of nodes are connected, comprising:

a submitting node configured to transmit information describing a product, information indicating whether or not the product is to be resubmitted for auction if a transaction fails to be established and information including sale conditions to a sponsor node for any product (Porat, col. 5, lines 55+ - col. 6, line 3; col. 9, lines 20 - 36; col. 14, lines 11- 26; col. 19, lines 20-28; col. 19, lines 39 - 67; col. 31, lines 38-47; col. 35, lines 28 - 48; col. 36, lines 53+ - col. 37, line 6);

Nonfunctional Descriptive Material

Certain types of descriptive material, such as music, literature, art, photographs, and mere arrangements or compilations of facts or data, without any functional interrelationship is not a process, machine, manufacture, or composition of matter. See MPEP § 2106.01, II.

and submit the product in the auction (Porat, col. 5, lines 55+ - col. 6, line 3; col. 9, lines 20 - 36; col. 35, lines 28 - 48; col. 36, lines 53+ - col. 37, line 6);

a sponsor node configured to disclose said submitted product as a product for auction by a format enabling viewing from individual nodes (Porat, col. 5, lines 55+ - col. 6, line 3; col. 9, lines 20 - 36; col. 35, lines 28 - 48; col. 36, lines 53+ - col. 37, line 6),

receive a bid from any node (Porat, abstract, col. 1, lines 8 – 22, col. 5, lines 56+ - col. 6, line 3; col. 9, lines 21 – 36; col. 19, line 1-19; col. 20, lines 3 – 10; col. 35, lines 28 – 48; col. 36, lines line 40+ - col. 37, line 6);

determine a successful bid from bids having purchase conditions matching with the sale conditions of the product (Porat, abstract, col. 1, lines 8 – 22, col. 5, lines 56+ - col. 6, line 3; col. 9, lines 21 – 36; col. 19, line 1-19; col. 20, lines 3 – 10; col. 35, lines 28 – 48; col. 36, lines line 40+ - col. 37, line 6),

change part or all of the content of said disclosure and said sale conditions for a product failing in establishment of a transaction (Porat, col. 14, lines 11 – 26; col. 19, lines 20 – 28; col. 19 lines 39 - 67; col. 31, lines 38 - 47),

and include this as a product for auction again (Porat, col. 14, lines 11 – 26; col. 19, lines 20 – 28; col. 19 lines 39 - 67; col. 31, lines 38 - 47); and

a bidding node configured to view the product for auction disclosed from said sponsor node via a network (Porat, col. 37, lines 7 – 34),

and place a bid with respect to the product desired to be purchased (Porat, abstract, col. 1, lines 8 – 22, col. 5, lines 56+ - col. 6, line 3; col. 9, lines 21 – 36; col. 19, line 1-19; col. 20, lines 3 – 10; col. 35, lines 28 – 48; col. 36, lines line 40+ - col. 37, line 6).

**Re Claim 2:** Porat discloses the claimed invention supra and further discloses

wherein said submitting node is configured to transmit to the sponsor node information on whether it wishes to submit the product for re-auction if ,the transaction fails to be

established (Porat, col. 5, lines 55+ - col. 6, line 3; col. 9, lines 20 - 36; col. 35, lines 28 - 48; col. 36, lines 53+ - col. 37, line 6), and

said sponsor node is configured to include a product as a product for re-auction only when a product for which a transaction has failed to be established has an instruction for submission for re-auction (Porat, col. 14, lines 11 - 26; col. 19, lines 20 - 28; col. 19 lines 39 - 67; col. 31, lines 38 - 47)..

**Re Claim 3:** Porat discloses the claimed invention supra and further discloses

wherein said submitting node is configured to transmit to the sponsor node instruction on whether it wishes to submit the product for re-auction if the transaction fails to be established along with information describing the product and information on the sales conditions at the same time as applying for submission of the product (Porat, col. 5, lines 55+ - col. 6, line 3; col. 9, lines 20 - 36; col. 35, lines 28 - 48; col. 36, lines 53+ - col. 37, line 6), and

said sponsor node is configured to change part or all of the content of the disclosure relating to the product and the sales conditions (Porat, col. 14, lines 11 - 26; col. 19, lines 20 - 28; col. 19 lines 39 - 67; col. 31, lines 38 - 47),

and includes a product as for re-auction only for a product for which a transaction has failed to be established and having an instruction for submission for re-auction (Porat, col. 14, lines 11 - 26; col. 19, lines 20 - 28; col. 19 lines 39 - 67; col. 31, lines 38 - 47).

**Re Claim 5:** Porat discloses the claimed invention supra and further discloses

wherein said sponsor node is configured to disclose each product for auction in a format enabling viewing by categories of products, make changes including changing the category of the product for a product for which a transaction has failed to be established and be submitted for re-auction, and include that product as a product for re-auction (Porat, col. 37, lines 7 – 34).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**Claim 5** is rejected under 35 U.S.C. 103(a) as being unpatentable over Wagoner as applied to claims 1, 2 and 3 above, and further in view of Porat, US Pat. No. 7,330,826.



**Re Claim 5:** Wagoner discloses the claimed invention supra but fails to explicitly disclose

wherein said sponsor node is configured to disclose each product for auction in a format enabling viewing by categories of products, makes changes including changing the category of the product for a product for which a transaction has failed to be established and be submitted for re-auction, and include that product as a product for re-auction.

Porat discloses:

wherein said sponsor node is configured to disclose each product for auction in a format enabling viewing by categories of products, makes changes including changing the category of the product for a product for which a transaction has failed to be established and be submitted for re-auction, and include that product as a product for re-auction (Porat, col. 37, lines 7 – 34).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Wagoner by adopting the teachings of Porat to provide wherein said sponsor node is configured to disclose each product for auction in a format enabling viewing by categories of products, makes changes including changing the category of the product for a product for which a transaction has failed to be established and be submitted for re-auction, and include that product as a product for re-auction.

The claimed invention applies prior art elements according to known methods to yield predictable results; applies a known technique to a known device (method, or

product) ready for improvement to yield predictable results; and known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations are predictable to one of ordinary skill in the art. Thus, the claimed subject matter likely would have been obvious under KSR. *KSR*, 127 S.Ct. at 1741, 82 USPQ2d at 1396.

**Claims 4 and 6** are rejected under 35 U.S.C. 103(a) as being unpatentable over Porat as applied to claims 1, 2 and 3 above, and further in view of Wagoner, US Pat. No. 7,219,080.

**Re Claim 4:** Porat discloses the claimed invention supra but fails to explicitly disclose: wherein said sales conditions include a minimum reserve,

said purchase conditions include a bid, and

said sponsor node is configured to determine the successful bid from the bids of at least said minimum reserve, make changes such as processing for reducing the minimum reserve of the product for a product for which a transaction has failed to be established and being submitted for re-auction, and include that product as a product for re-auction.

Wagoner discloses:

wherein said sales conditions include a minimum reserve (Wagoner, abstract, col. 2, line 30+ - col. 3, line 12; col. 6, lines 30 - 47; col. 11, line 60+ - col. 12, line 56),

said purchase conditions include a bid (Wagoner, col. 3, line 13 - col. 4, line 13; col. 4, line 63+ - col. 5, line 2; col. 7, lines 6 - 15), and

said sponsor node is configured to determine the successful bid from the bids of at least said minimum reserve (Wagoner, col. 2, lines 53+ - col. 3, line 4; col. 3, line 13 - col. 4, line 13; col. 4, line 63+ - col. 5, line 2; col. 6, lines 30 - 47; col. 7, lines 6 - 15; col. 6, line 60+ - col. 12, line 56),

make changes such as processing for reducing the minimum reserve of the product for a product for which a transaction has failed to be established and being submitted for re-auction (Wagoner, abstract, col. 2, lines 30+ - col. 3, line 12; col. 6, lines 30 - 60; col. 11, line 60+ - col. 12, line 56),

and include that product as a product for re-auction (Wagoner, abstract, col. 2, lines 30+ - col. 3, line 12; col. 6, lines 48 - 60).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Porat by adopting the teachings of Wagoner to provide wherein said sales conditions include a minimum reserve, said purchase conditions include a bid, and said sponsor node is configured to determine the successful bid from the bids of at least said minimum reserve, make changes such as processing for reducing the minimum reserve of the product for a product for which a transaction has failed to be established and being submitted for re-auction, and include that product as a product for re-auction.

The claimed invention applies prior art elements according to known methods to yield predictable results; applies a known technique to a known device (method, or product) ready for improvement to yield predictable results; and known work in one field

of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations are predictable to one of ordinary skill in the art. Thus, the claimed subject matter likely would have been obvious under KSR. *KSR*, 127 S.Ct. at 1741, 82 USPQ2d at 1396.

**Re Claim 6:** Porat discloses the claimed invention *supra* but fails to explicitly disclose: wherein said sale conditions include information designating an auction period, and said sponsor node is configured to disclose said product and receive bids in said designated period, make changes including changing the auction period for a product for which a transaction has failed to be established and be submitted for re-auction, and include that product as a product for re-auction.

Wagoner discloses:

wherein said sale conditions include information designating an auction period (Wagoner, abstract, col. 2, line 30+ - col. 3, line 12; col. 11, line 60+ - col. 12, line 16; col. 13, lines 19 - 42), and

said sponsor node is configured to disclose said product and receive bids in said designated period (Wagoner, col. 2, lines 30+ - col. 4, line 13; col. 4, line 63+ - col. 5, line 2; col. 7, lines 6 - 15; col. 13, lines 19 - 42),

make changes including changing the auction period for a product for which a transaction has failed to be established and being submitted for re-auction (Wagoner, abstract, col. 2, lines 30+ - col. 3, line 12; col. 6, lines 48 - 60; col. 13, lines 19 - 22),

and include that product as a product for re-auction (Wagoner, abstract, col. 2, lines 30+ - col. 3, line 12; col. 6, lines 48 - 60).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Porat by adopting the teachings of Wagoner to provide wherein said sale conditions include information designating an auction period, and said sponsor node is configured to disclose said product and receive bids in said designated period, make changes including changing the auction period for a product for which a transaction has failed to be established and be submitted for re-auction, and include that product as a product for re-auction.

The claimed invention applies prior art elements according to known methods to yield predictable results; applies a known technique to a known device (method, or product) ready for improvement to yield predictable results; and known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations are predictable to one of ordinary skill in the art. Thus, the claimed subject matter likely would have been obvious under KSR. *KSR*, 127 S.Ct. at 1741, 82 USPQ2d at 1396.

### ***Response to Arguments***

#### **101**

Applicant's arguments have been fully considered but they are not persuasive. The claim is not drawn to method/process claim at all and the 101 rejection was not based on a Bilski rationale. The claimed invention is drawn to a system/apparatus however, there is no structure in the body of the claim. A system claim is defined by its

structural components. In the claimed invention only a series of "nodes" are claimed. The "nodes" have been interpreted as software and software is not one of the enumerated categories of patent eligible subject matter. As noted, applicant may provide support in their specification regarding whether the "nodes" are hardware and/or software. Please see remarks supra under claim interpretation.

See also remarks under the 101 rejection supra.

### **112**

Applicant's arguments have been fully considered but they are not persuasive.

Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, essential steps and/or essential structural cooperative relationships of elements such omission amounting to a gap between the elements, the steps and/or the necessary structural connections. See MPEP § 2172.01.

Applicant's claims are indefinite because of the failure to use consistent terminology and to tie together the components of the system and the acts that they are performing.

For example, the information about the product and the fact that it is submitted for auction is transmitted/submitted to the sponsor node. Presumably, that information is used by the sponsor node as part of the invention. Maybe, in the display or view format that presents the product information such as the sales conditions to the prospective bidders.

For example, the claim is dependent upon the matching of sale conditions and purchase conditions but, the claim has not clarified the source of both types of information before they are matched.

For example, the nodes that can view the auction shouldn't just be any nodes. These nodes should be one or more bidding nodes of the invention claimed. The bids received shouldn't come from anyone. The bids received should be coming from the one or more bidding nodes that are viewing the auction.

For example, if the claim makes a determination between two outcomes (a) the product is to be resubmitted for auction; and (b) the product is not to be resubmitted for auction. The claim should clarify what happens with either outcome or explicitly recite that the subsequent claim limitations are limited to one of the outcomes.

For example, the claim mentions a disclosure without providing antecedent basis for the disclosure.

Please see remarks supra under claim interpretation.

See also remarks under the 112 rejection supra.

**102/103**

Applicant's arguments have been fully considered but they are not persuasive.

Applicant argues the prior art fails to explicitly disclose, "a submitting node configured to transmit information describing a product, information indicating whether or not the product is to be resubmitted for auction if a transaction fails to be established and information including sale conditions to a sponsor node for any product and submit the product in the auction;"

First, as noted *supra*, there is an indefiniteness issue regarding the claimed invention. As presently claimed, it doesn't matter whether there is information indicating whether or not the product is to be resubmitted for auction if a transaction fails to be established. As presently claimed, the disclosure about the product is changed and the product is put up for auction again regardless of whether or not the information transmitted by the submitting node indicates that it should.

The information amounts to nonfunctional descriptive material and has no bearing on any of the actions taken by the system/apparatus claimed.

#### Nonfunctional Descriptive Material

Certain types of descriptive material, such as music, literature, art, photographs, and mere arrangements or compilations of facts or data, without any functional interrelationship is not a process, machine, manufacture, or composition of matter. See MPEP § 2106.01, II.

Second, Wagoner describes how part or all of the content of the disclosure and sale conditions may be changed (e.g., modified seller parameters) and resubmitted (e.g., re-auctioning the product with modified seller parameters). Wagoner describes how this is done when a product fails in the establishment of a transaction (e.g., In Wagner, actions taken to avoid an unsuccessful auction and ultimately result in a successful auction). See citations *supra*.

Third, Porat describes how part or all of the content of the disclosure and sale conditions may be changed (e.g., adjusted seller offers). and resubmitted (e.g., automated and real-time submission of the seller's offers and adjusted offers). Similar to Wagoner, Porat strives toward a successful auction outcome.

#### ***Conclusion***



Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SARA CHANDLER whose telephone number is (571)272-1186. The examiner can normally be reached on M-F, 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Kramer can be reached on (571)272-6783. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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